

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

CLEVELAND EVANS,

Plaintiff,

v.

R. PERRY, et al.,

Defendants.

No. 2:23-cv-0076 TLN AC P

ORDER

Plaintiff is a state prisoner who filed this civil rights action pursuant to 42 U.S.C. § 1983 without a lawyer. Upon screening the original complaint, the court found that plaintiff had failed to state any claims for relief against defendants Perry, Leslie, Passwaters, Cross, and Warren. ECF No. 12. The court gave plaintiff leave to amend. *Id.* at 6-7. Pending before the court is plaintiff's first amended complaint ("FAC"). ECF No. 17

I. Statutory Screening of Prisoner Complaints

The court is required to screen complaints brought by prisoners seeking relief against "a governmental entity or officer or employee of a governmental entity." 28 U.S.C. § 1915A(a). A claim "is [legally] frivolous where it lacks an arguable basis either in law or in fact." *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). The court may dismiss a claim as frivolous if it is based on an indisputably meritless legal theory or factual contentions that are baseless. *Id.*, 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully pleaded, has an

1 arguable legal and factual basis. Jackson v. Arizona, 885 F.2d 639, 640 (9th Cir. 1989),  
2 superseded by statute on other grounds as stated in Lopez v. Smith, 203 F.3d 1122, 1130 (9th Cir.  
3 2000).

4 In order to avoid dismissal for failure to state a claim a complaint must contain more than  
5 “naked assertion[s],” “labels and conclusions,” or “a formulaic recitation of the elements of a  
6 cause of action.” Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555, 557 (2007). In other words,  
7 “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory  
8 statements, do not suffice.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). A claim upon which the  
9 court can grant relief has facial plausibility. Twombly, 550 U.S. at 570. “A claim has facial  
10 plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable  
11 inference that the defendant is liable for the misconduct alleged.” Iqbal, 556 U.S. at 678 (citation  
12 omitted). When considering whether a complaint states a claim, the court must accept the  
13 allegations as true, Erickson v. Pardus, 551 U.S. 89, 94 (2007) (per curiam), and construe the  
14 complaint in the light most favorable to the plaintiff, Jenkins v. McKeithen, 395 U.S. 411, 421  
15 (1969) (citations omitted).

16 II. Factual Allegations of the First Amended Complaint

17 Plaintiff’s FAC alleges that defendants Peery, Leslie, Passwaters, Cross, and Warren  
18 violated plaintiff’s rights under the Eighth and Fourteenth Amendment. ECF No. 17 at 2-5.  
19 Specifically, the FAC alleges that plaintiff received a Rules Violation Report (“RVR”) charging  
20 him with “Disrespect with potential for violence/disruption,” a violation under Title 15 section  
21 3004(b) of the California Code of Regulations (“CCR”). ECF No. 17 at 2. Plaintiff appeared  
22 before Leslie for disposition of the RVR. Id. Leslie found plaintiff guilty of an “uncharged” and  
23 “upgraded” offense under Title 15 section 3041(a) for continued refusal to participate/continued  
24 failure to perform assigned work. Id. A few days later, Passwaters informed plaintiff that  
25 because of the guilty disposition of his RVR he would appear before the Unit Classification  
26 Committee (“UCC”) for adverse program and housing placement as Privilege Group C. Id. at 3.  
27 Plaintiff appeared before Passwaters, Cross, and Warren, members of the UCC. Id. Although the  
28 UCC could not find evidence to substantiate Leslie’s decision, the UCC decided not to undermine

1 Leslie's decision. Id. at 4. Because plaintiff was found guilty of a "Program Failure" he was  
2 subjected to "loss of privileges, loss of good time credits, increase of placement scores (points),  
3 placement in 'isolated housing.'" Id. at 3-4.

4 Plaintiff asserts that his due process rights were violated because he never received notice  
5 of a charge under section 3041(a), the RVR did not allege that plaintiff had refused to participate  
6 and/or perform assigned work, and there was no evidence to substantiate the charge. Id. at 2-3.  
7 He further asserts that there is nothing in the record to support that he had an opportunity to  
8 present testimony and documentary evidence to an impartial decision-maker, and a written  
9 explanation for the decision supported by some evidence in the record. Id. at 5.

10 Plaintiff also claims that he was not afforded the same procedural protections as others  
11 similarly situated, ECF No. 17 at 3; Perry, Passwaters, Cross, and Warren were in positions of  
12 authority and failed to mitigate further deprivation of his due process rights, id. at 4-5; and Perry  
13 reviewed all of plaintiff's grievances and appeals and failed to mitigate the deprivation after each  
14 appeal. Id. at 5.

15 **III. Claims for Which a Response Will Be Required**

16 After conducting the screening required by 28 U.S.C. § 1915A(a), and liberally construing  
17 the allegations in the FAC, the court finds that plaintiff has adequately stated a Fourteenth  
18 Amendment procedural due process claim against defendant Leslie for failure to provide plaintiff  
19 notice of a disciplinary charge under Title 15 Section 3041(a), an upgraded offense, before  
20 issuing a finding of guilt.

21 **IV. Failure to State a Claim**

22 The allegations in the complaint are not sufficient to state any other claim for relief  
23 against defendant Leslie and/or any claims against defendants Perry, Passwaters, Cross, and  
24 Warden.

25 **A. Claims Under California Constitution**

26 Plaintiff's claim against defendants for violating his rights under the California  
27 Constitution are not cognizable § 1983 claims because section 1983 claims must be based on a  
28 violation of federal rights.

1                   B. Eighth Amendment Deliberate Indifference

2                   Plaintiff does not indicate which facts support an Eighth Amendment violation. However,  
3 to the extent plaintiff asserts an Eighth Amendment violation based on his loss of good-time  
4 credits resulting from an alleged due process violation, or loss of privileges due to his  
5 reclassification, such claims are not cognizable.<sup>1</sup> The loss of good time credits and privileges  
6 does not rise to the level of cruel and unusual punishment.

7                   C. Fourteenth Amendment Due Process

8                   i. Classification

9                   Plaintiff fails to state a claim against Passwaters, Cross, and Warren based on their ruling  
10 to reclassify plaintiff into Privilege Group C. Prisoners do not have a constitutional right to a  
11 particular classification, even if it results in the loss of privileges.

12                   ii. Failure to Investigate

13                   It appears plaintiff is attempting to allege that defendants Passwaters, Cross, and Warren  
14 violated his due process rights by not properly investigating the basis for defendant Leslie's RVR  
15 disposition before reclassifying him. However, to the extent he seeks to hold them accountable  
16 for failure to investigate, he cannot do so. Failure to properly investigate a disciplinary charge  
17 does not violate due process.

18                   iii. Grievances

19                   Plaintiff's allegations against defendant Perry based on his rejection of plaintiff's  
20 grievance appeals does not state a claim. Reviewing and rejecting an inmate's grievance is not a  
21 basis for liability under § 1983. Because Perry did not cause the constitutional violation, and  
22 merely rejected plaintiff's grievances, he has not violated plaintiff's constitutional rights.

23                   iv. Loss of Privileges

24                   To the extent plaintiff asserts Passwaters, Cross, and Warren violated his due process  
25 rights by not affording him the procedures under Wolff v. McDonnell, 418 U.S. 539, 556 (1974),  
26 for loss of privileges other than loss of good time credits, he fails to state a claim for relief. He

---

27                   <sup>1</sup> The FAC does not allege the specific amount of loss of good time credits or privileges,  
28 however, the original complaint alleged a loss of 30-days of good-time credits. ECF No. 1 at 4.

1 has not alleged what the loss of privileges were, much less that they imposed atypical and  
2 significant hardships on him beyond the ordinary incidents of prison life.

3                   D. Equal Protection Clause

4 Plaintiff fails to state an equal protection violation because his one sentence statement that  
5 he was not afforded the same procedural protections as others who are similarly situated is  
6 conclusory. To state an Equal Protection Clause claim, plaintiff must allege *facts* that he is a  
7 member of a protected class and that defendants acted with an intent or purpose to discriminate  
8 against him based on his membership in a protected class, or that there were other prisoners who  
9 were similarly situated to him and intentionally treated differently than him without a legitimate  
10 purpose. Because he fails to make such factual allegations, he fails to state a claim.

11                   E. Supervisory Liability

12 To the extent plaintiff seeks to hold Perry, Passwaters, Cross, and Warren liable as  
13 persons in supervisory positions, he fails to state a claim. A person holding a supervisory  
14 position is only liable if they participated in or directed the constitutional violation or knew of a  
15 constitutional violation and failed to prevent it. The latter requires knowledge before or during  
16 the constitutional violation and failure to prevent it, not failure to prevent a constitutional  
17 violation after the fact.

18 Several of these defects cannot be cured by amendment. However, because plaintiff is pro  
19 se, his Equal Protection Clause claim was not previously addressed on screening, and it appears  
20 he may be able to allege facts to fix the deficiencies in that claim, he will be granted leave to  
21 amend.

22                   V. Options from Which Plaintiff Must Choose

23 Based on the court's screening, plaintiff has a choice to make. After selecting an option  
24 from the two options listed below, plaintiff must return the attached Notice of Election form to  
25 the court within 21 days from the date of this order.

26                   **The first option available to plaintiff is to proceed immediately against defendant**  
27 **Leslie on the Fourteenth Amendment procedural due process claim based on failure to**  
28 **receive notice of charges before his RVR hearing. By choosing this option, plaintiff will be**

1 **agreeing to voluntarily dismiss defendants Perry, Passwaters, Cross, and Warren and his**  
2 **claims under the state law, the Eighth Amendment, and all other claims under the**  
3 **Fourteenth Amendment. The court will proceed to immediately serve the complaint and**  
4 **order a response from defendant Leslie.**

5 **The second option available to plaintiff is to file an amended complaint to fix the**  
6 **problems described in Section IV with respect to his Equal Protection Clause claim. If**  
7 **plaintiff chooses this option, the court will set a deadline in a subsequent order to give**  
8 **plaintiff time to file an amended complaint.**

9 **VI. Plain Language Summary of this Order for Party Proceeding Without a Lawyer**

10 Some of the allegations in the complaint state claims against the defendants and some do  
11 not. You have stated a claim against defendant Leslie for finding you guilty of an upgraded  
12 charge for which you did not receive prior notice of. You have not stated any other claims  
13 against defendant Leslie or any other defendant.

14 You have a choice to make. You may either (1) proceed immediately on your Fourteenth  
15 Amendment procedural due process claim against defendant Leslie and voluntarily dismiss the  
16 other claims; or, (2) try to amend the complaint. To decide whether to amend your complaint, the  
17 court has attached the relevant legal standards that may govern your claims for relief. See  
18 Attachment A. Pay particular attention to these standards if you choose to file an amended  
19 complaint.

20 **CONCLUSION**

21 In accordance with the above, IT IS HEREBY ORDERED that:

22 1. Plaintiff's claims against defendants Perry, Passwaters, Cross, and Warren do not state  
23 claims for which relief can be granted.

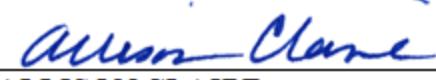
24 2. Plaintiff has the option to proceed immediately on his Fourteenth Amendment due  
25 process claim against defendant Leslie as set forth in Section III above, or to file an amended  
26 complaint.

27 3. Within 21 days from the date of this order, plaintiff shall complete and return the  
28 attached Notice of Election form notifying the court whether he wants to proceed on the screened

1 complaint or whether he wants to file an amended complaint.

2 4. If plaintiff does not return the form, the court will assume that he is choosing to  
3 proceed on the complaint as screened and will recommend dismissal without prejudice of his  
4 claims under the California Constitution, Eighth Amendment, Fourteenth Amendment Equal  
5 Protection Clause, and Fourteenth Amendment based on classification, failure to investigate,  
6 rejection of grievances, and loss of privileges.

7 DATED: July 14, 2025

8   
9 ALLISON CLAIRE  
10 UNITED STATES MAGISTRATE JUDGE

11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

CLEVELAND EVANS,

Plaintiff,

v.

R. PERRY, et al.,

Defendants.

No. 2:23-cv-0076 TLN AC P

NOTICE OF ELECTION

Check one:

Plaintiff wants to proceed immediately on his Fourteenth Amendment procedural due process claim against defendant Leslie without amending the complaint. Plaintiff understands that by choosing this option, the remaining state law and Eighth and Fourteenth Amendment claims against defendants Leslie, Perry, Passwaters, Cross, and Warren will be voluntarily dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(a).

Plaintiff wants time to file an amended complaint.

DATED: \_\_\_\_\_

Cleveland Evans  
Plaintiff pro se

## Attachment A

This Attachment provides, for informational purposes only, the legal standards that may apply to your claims for relief. Pay particular attention to these standards if you choose to file an amended complaint.

## I. Legal Standards Governing Amended Complaints

If plaintiff chooses to file an amended complaint, he must demonstrate how the conditions about which he complains resulted in a deprivation of his constitutional rights. Rizzo v. Goode, 423 U.S. 362, 370-71 (1976). Also, the complaint must specifically identify how each named defendant is involved. Arnold v. Int'l Bus. Machs. Corp., 637 F.2d 1350, 1355 (9th Cir. 1981). There can be no liability under 42 U.S.C. § 1983 unless there is some affirmative link or connection between a defendant's actions and the claimed deprivation. Id.; Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978). Furthermore, “[v]ague and conclusory allegations of official participation in civil rights violations are not sufficient.” Ivey v. Bd. of Regents, 673 F.2d 266, 268 (9th Cir. 1982) (citations omitted).

Plaintiff is also informed that the court cannot refer to a prior pleading in order to make his amended complaint complete. See Local Rule 220. This is because, as a general rule, an amended complaint replaces the prior complaint. Loux v. Rhay, 375 F.2d 55, 57 (9th Cir. 1967) (citations omitted), overruled in part by Lacey v. Maricopa County, 693 F.3d 896, 928 (9th Cir. 2012). Therefore, in an amended complaint, every claim and every defendant must be included.

## II. Legal Standards Governing Substantive Claims for Relief

#### A. State Law Claims

An officer's violation of state laws and/or regulations is not grounds for a § 1983 claim. See Case v. Kitsap County Sheriff's Dept., 249 F.3d 921, 930 (9th Cir. 2001) (quoting Gardner v. Howard, 109 F.3d 427, 430 (8th Cir 1997) ("[T]here is no § 1983 liability for violating prison policy. [Plaintiff] must prove that [the official] violated his constitutional right . . .")). Violations of state law and regulations cannot be remedied under § 1983 unless they also violate a federal constitutional or statutory right. See Nurre v. Whitehead, 580 F.3d 1087, 1092 (9th Cir. 2009) (section 1983 claims must be premised on violation of federal constitutional right); Sweeney v.

1        Ada Cty., Idaho, 119 F.3d 1385, 1391 (9th Cir. 1997) (section 1983 creates cause of action for  
 2 violation of federal law); Lovell v. Poway Unified Sch. Dist., 90 F.3d 367, 370 (9th Cir. 1996)  
 3 (federal and state law claims should not be conflated; “[t]o the extent that the violation of a state  
 4 law amounts the deprivation of a state-created interest that reaches beyond that guaranteed by the  
 5 federal Constitution, Section 1983 offers no redress”).

6                    **B. Eighth Amendment – Conditions of Confinement**

7        “The Constitution does not mandate comfortable prisons, but neither does it permit  
 8 inhumane ones.” Farmer v. Brennan, 511 U.S. 825, 832 (1994) (internal quotation marks and  
 9 citation omitted). “[A] prison official violates the Eighth Amendment only when two  
 10 requirements are met.” Id. at 834.

11        “First, the deprivation alleged must be, objectively, ‘sufficiently serious.’” Id. (quoting  
 12 Wilson v. Seiter, 501 U.S. 294, 298 (1991)). To be sufficiently serious, “a prison official’s act or  
 13 omission must result in the denial of ‘the minimal civilized measure of life’s necessities.’” Id.  
 14 (quoting Rhodes v. Chapman, 452 U.S. 337, 347 (1981)). “[R]outine discomfort inherent in the  
 15 prison setting” does not rise to the level of a constitutional violation. Johnson v. Lewis, 217 F.3d  
 16 726, 732 (9th Cir. 2000). Rather, “extreme deprivations are required to make out a[n] [Eighth  
 17 Amendment] conditions-of-confinement claim.” Hudson v. McMillian, 503 U.S. 1, 9 (1992).  
 18 “More modest deprivations can also form the objective basis of a violation, but only if such  
 19 deprivations are lengthy or ongoing.” Johnson, 217 F.3d at 732. Placement in restrictive  
 20 housing, by itself, does not rise to the level of an Eighth Amendment violation. See Anderson v.  
 21 County of Kern, 45 F.3d 1310, 1316 (9th Cir. 1995) (“administrative segregation, even in a single  
 22 cell for twenty-three hours a day, is within the terms of confinement ordinarily contemplated by a  
 23 sentence” (citation omitted)).

24        Second, the prison official must subjectively have a “sufficiently culpable state of mind,”  
 25 “one of ‘deliberate indifference’ to inmate health or safety.” Farmer, 511 U.S. at 834 (citations  
 26 omitted). “[T]he official must both be aware of facts from which the inference could be drawn  
 27 that a substantial risk of serious harm exists, and he must also draw the inference.” Id. at 837. He  
 28 must then fail to take reasonable measures to lessen the substantial risk of serious harm. Id. at

1 847. If a prison official's response to a known risk is reasonable, they "cannot be found liable."  
 2 Id. at 845. Negligent failure to protect an inmate from harm is not actionable under § 1983. Id. at  
 3 835.

4 With respect to punishment received for a disciplinary violation, "only those deprivations  
 5 denying 'the minimal civilized measure of life's necessities' are sufficiently grave to form the  
 6 basis of an Eighth Amendment violation." Hudson v. McMillian, 503 U.S. 1, 9 (1992) (quoting  
 7 Wilson v. Seiter, 501 U.S. 294, 298 (1991)). "The loss of good time credits and privileges does  
 8 not rise to the level of cruel and unusual punishment." Penn v. Warden of Kern Valley State  
 9 Prison, No. 1:18-cv-1482 AWI HBK, 2021 WL 2853300, at \*5, 2021 U.S. Dist. LEXIS 127681,  
 10 at \*13 (E.D. Cal. July 8, 2021); see also Baker v. Walker, No. 08-cv-1370 DAD, 2008 WL  
 11 2705025, at \*3, 2008 U.S. Dist. LEXIS 54808 (E.D. Cal. July 9, 2008) ("A temporary loss of  
 12 privileges . . . does not 'present a dramatic departure from the basic conditions' of prison life."  
 13 (quoting Sandin v. Connor, 515 U.S. 472, 486 (1995))).

14           C. Fourteenth Amendment Due Process

15           i. Classification

16           It is well-established that prisoners have no constitutional right to a particular  
 17 classification, even if it results in loss of privileges. See Myron v. Terhune, 476 F.3d 716, 718  
 18 (9th Cir. 2007) (concluding California prisoner does not have liberty interest in residing at a level  
 19 III prison as opposed to level IV); Hernandez v. Johnston, 833 F.2d 1316, 1318 (9th Cir. 1987)  
 20 (emphasizing that "'a prisoner has no constitutional right to a particular classification status'")  
 21 (quoting Moody v. Daggett, 429 U.S. 78, 88 n.9 (1976)); see also Sunkett v. Boerum, No. 1:17-  
 22 cv-1137 HBK (PC)2024 WL 4369900, at \*4, 2024 U.S. Dist. LEXIS 178253, at \*10-11 (E.D.  
 23 Cal. Sept. 30, 2024) ("It is well settled that prisoners have no constitutional right to a particular  
 24 classification status, even if the classification status results in a loss of privileges.").

25           ii. Failure to Investigate

26           An officer's failure to properly investigate disciplinary charges does not violate due  
 27 process. See Gomez v. Whitney, 757 F.2d 1005, 1006 (9th Cir. 1985) ("[W]e can find no  
 28 instance where the courts have recognized inadequate investigation as sufficient to state a civil

rights claim unless there was another recognized constitutional right involved.” (citation omitted)); see also *Pickett v. Williams*, 498 F. App’x 699, 700 (9th Cir. 2012) (“[T]here is no constitutional right to request an investigation or receive administrative review of prison disciplinary proceedings.”).

### iii. Grievances

6 The existence of a prison grievance procedure establishes a procedural right only and  
7 “does not confer any substantive right upon the inmates.” Buckley v. Barlow, 997 F.2d 494, 495  
8 (8th Cir. 1993) (citation omitted); see also Ramirez v. Galaza, 334 F.3d 850, 860 (9th Cir. 2003)  
9 (no liberty interest in processing of appeals because no entitlement to a specific grievance  
10 procedure). This means that a prison official’s action in reviewing an inmate grievance cannot  
11 serve as a basis for liability under Section 1983. Buckley, 997 F.2d at 495. “Only persons who  
12 cause or participate in the violations are responsible. Ruling against a prisoner on an  
13 administrative complaint does not cause or contribute to the violation. A guard who stands and  
14 watches while another guard beats a prisoner violates the Constitution; a guard who rejects an  
15 administrative complaint about a completed act of misconduct does not.” George v. Smith, 507  
16 F.3d 605, 609-10 (7th Cir. 2007) (citations omitted).

#### iv. Disciplinary

18       “Prison disciplinary proceedings are not part of a criminal prosecution, and the full  
19       panoply of rights due a defendant in such proceedings does not apply.” Wolff v. McDonnell, 418  
20       U.S. 539, 556 (1974). Rather, with respect to prison disciplinary proceedings that include the loss  
21       of good-time credits, an inmate must receive (1) twenty-four-hour advanced written notice of the  
22       charges against him, id. at 563-64; (2) “a written statement by the factfinders as to the evidence  
23       relied on and reasons for the disciplinary action,” id. at 564 (citation and internal quotation marks  
24       omitted); (3) an opportunity to call witnesses and present documentary evidence where doing so  
25       “will not be unduly hazardous to institutional safety or correctional goals,” id. at 566; (4)  
26       assistance at the hearing if he is illiterate or if the matter is complex, id. at 570; and (5) a  
27       sufficiently impartial fact finder, id. at 570-71. A finding of guilt must also be “supported by  
28       some evidence in the record.” Superintendent v. Hill, 472 U.S. 445, 454 (1985).

1       The Wolff court noted that its decision was not meant to “suggest . . . that the procedures  
 2 required . . . for the deprivation of good time would also be required for the imposition of lesser  
 3 penalties such as the loss of privileges.” Wolff, 418 U.S. at 571 n.19. When a prisoner does not  
 4 lose any good-time credits, he may also demonstrate that he is entitled to the due process outlined  
 5 in Wolff by alleging facts showing that the disciplinary “impose[d] atypical and significant  
 6 hardship on [him] in relation to the ordinary incidents of prison life.” Sandin v. O’Conner, 515  
 7 U.S. 472, 484 (1995).

8                   D. Equal Protection Clause

9       The Fourteenth Amendment’s Equal Protection Clause requires the State to treat all  
 10 similarly situated people equally. City of Cleburne v. Cleburne Living Ctr., 473 U.S. 432, 439  
 11 (1985) (citation omitted). “To state a claim for violation of the Equal Protection Clause, a  
 12 plaintiff must show that the defendant acted with an intent or purpose to discriminate against him  
 13 based upon his membership in a protected class.” Serrano v. Francis, 345 F.3d 1071, 1082 (9th  
 14 Cir. 2003) (citing Barren v. Harrington, 152 F.3d 1193, 1194 (9th Cir. 1998)). Alternatively, a  
 15 plaintiff may state an equal protection claim if he shows similarly situated individuals were  
 16 intentionally treated differently without a rational relationship to a legitimate government  
 17 purpose. Vill. of Willowbrook v. Olech, 528 U.S. 562, 564 (2000) (citations omitted).

18                   E. Personal Involvement and Supervisory Liability

19       “Liability under § 1983 must be based on the personal involvement of the defendant,”  
 20 Barren v. Harrington, 152 F.3d 1193, 1194 (9th Cir. 1998) (citing May v. Enomoto, 633 F.2d  
 21 164, 167 (9th Cir. 1980)), and “[v]ague and conclusory allegations of official participation in civil  
 22 rights violations are not sufficient,” Ivey v. Bd. of Regents, 673 F.2d 266, 268 (9th Cir. 1982)  
 23 (citations omitted). “A person ‘subjects’ another to the deprivation of a constitutional right,  
 24 within the meaning of section 1983, if he does an affirmative act, participates in another’s  
 25 affirmative acts, or omits to perform an act which he is legally required to do that causes the  
 26 deprivation of which complaint is made.” Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir.  
 27 1978) (citation omitted). In other words, to state a claim for relief under section 1983, plaintiff  
 28 must link each individual defendant with some affirmative act or omission that shows a violation

1 of plaintiff's federal rights.

2 Furthermore, “[t]here is no respondeat superior liability under section 1983,” Taylor v.  
3 List, 880 F.2d 1040, 1045 (9th Cir. 1989) (citation omitted), which means that a supervisor  
4 cannot be held responsible for the conduct of his subordinates just because he is their supervisor.  
5 “A supervisor is only liable for constitutional violations of his subordinates if the supervisor  
6 participated in or directed the violations, or knew of the violations and failed to act to prevent  
7 them.” Id.

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28